IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 14TH NOVEMBER 2006 / 23RD KARTHIKA 1928

Crl.MC.No. 4794 of 2003-D

CRRP.76/2001 of ADDL.SESSIONS COURT, KOZHIKODE
MC.42/1999 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA

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PETITIONER: REVISION PETITIONER/RESPONDENT:

ERATHU MEETHAL ABDUL JALEEL,
S/O. ABDULLA, AGED 34 YEARS,
THREKKOTTUR AMSOM, PALOOR DESOM,
KOYILANDY TALUK.

BY ADV. SRI.MOHAMMED NIAS.C.P.

RESPONDENTS: RESPONDENT/PETITIONER:

THEKKE RAYAROTHU THAMASIKKUM
PARAVINDAVIDA NASEEMA, D/O. KUNHABDULLA,
PUTHUPPANAM AMSOM AND DESOM
VADAKARA TALUK.

BY PUBLIC PROSECUTORMR.GIKKU JACOB
SRI.M.ASOKAN
SRI.DEVAPRASANTH.P.J.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/11/2006, THE COURT ON 14/11/2006 PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL.M.C.NO.4794 OF 2003-D

DATED THIS THE 14th DAY OF November 2006

ORDER

The petitioner, who is the respondent in M.C.No.42/1999 in the file of the Judicial First Class Magistrate Court, Vadakara and the revision petitioner in Crl.R.P.No.76/2001 in the file of the Sessions Court, Kozhikode, has sought for setting aside the orders of the above courts directing him to pay altogether a sum of Rs.3,01,000/- towards maintenance during the period iddat, return of the amounts received and reasonable and fair provision and maintenance as per the provisions of the Muslim Women (Protection of Rights on Divorce) Act. It is the case of the petitioner that the finding of the courts below that he had received at the time of marriage a sum of Rs.1,75,000/- is not supported by evidence. It is further pointed out that the non-examination of the father of the petitioner who has allegedly paid the amount is fatal to the case of the complainant. According to the petitioner, the evidence adduced in this regard

is totally unreasonable. It is also contended that the quantification of fair and reasonable provision and maintenance is excessive and exorbitant.

2. I find that the evidence adduced in the matter consisted of the testimony of PWs.1 to 3 and that of RW1, the respondent/petitioner and Exts.P1 to P4 and D1 & D2.

3. It is the case of the petitioner/wife (to be mentioned hereinafter as the petitioner) that the marriage was conducted on 10-5-1992 and herself and the husband were living in the house of the respondent and at the time of marriage the father of the petitioner had paid an amount of Rs. 1,75,000/- to the respondent for getting him an employment at Kuwait. 45 sovereigns of gold ornaments were also given and that except 8 ½ sovereigns of gold ornaments used for daily wearing the rest of 46 ½ sovereigns of gold was kept by the respondent. Out of the gifts received by her i.e. a sum of Rs.45,000/- from her friends and relatives, Rs.25,000/- was given to the respondent. After marriage, the respondent demanded 30 more sovereigns of gold ornaments and also landed property. She was ill-treated by the respondent and his mother. After marriage he went to

Kuwait on employment. For the air ticket and other expenses, a sum of Rs.25,000/- was also paid to the respondent by her father. Out of the amount paid at the time of marriage, the respondent and his elder brother purchased 60 cents of property. The petitioner was forced to leave the matrimonial home. Subsequently on 6-2-1999, she was divorced by pronouncing triple talak and he has married another lady. It is the case that she is getting a sum of R.25,000/- per month as salary and another Rs.25,000/- per year from the property purchased by him out of the funds received from her father. A sum of Rs.7500/- was claimed as maintenance during the iddat period, Rs.3,50,000/- as reasonable and fair provision and maintenance and the petitioner is entitled to get Rs.1,53,450/- as cost of the 46 ½ sovereigns of gold and also return of Rs.1,75,000/- paid by her father at the time of marriage and Rs.25,000/- given to the respondent out of the gifts she received and Rs.25,000/- paid by the father of the petitioner towards air fare charges etc. and also the cost of a gold ring and a wrist watch. After considering the evidence adduced in the matter, the court below awarded Rs.6000/- towards maintenance during

iddat period, Rs.1,20,000/- for future maintenance and ordered to return Rs.1,75,000/-, the amount received by him from the father of the petitioner,i.e. altogether a sum of Rs.3,01,000/-.

4.The defence of the respondent was that the petitioner was having illicit affairs with her uncle's son and that she left the matrimonial home at her own accord. He has totally denied the receipt of Rs.1,75,000/- or the alleged appropriation of the gold ornaments. The receipt of cash of Rs.25,000/- towards air fare and money out of the gift was received was also denied. It is also pointed out that the petitioner has not observed iddat. The alleged cruelty was flatly denied. It was also contended that the respondent is only a salesman in Kuwait and getting only Rs.3,000/- per month.

5. It is on the basis of the evidence of PW1, the petitioner and the evidence of PWs.2 and 3 who are the husband of the petitioner's mother's sister and the Secretary of Juma ath committee respectively that the courts below held concurrently as mentioned above. The version of the witnesses that the father of the petitioner is laid up due to a stroke was treated as trustworthy. The petitioner has also produced Ext.P1

assignment deed of 57 cents of property that belonged to her father wherein a sum of Rs.22,000/- is mentioned as sale consideration. It was testified by the witnesses that the actual consideration was Rs.1,00,000/- which was found to be believable in view of the fact that the property extented of 57 cents. Moreover the petitioner has also produced Ext.P2account book with respect to Panapayattu for raising the amount which is said to be in the handwriting of PW2. PW1 has also stated that Rs.75,000/-was paid prior to the nikkah and the balance subsequently. Ext.P3 is the assignment deed in favour of the husband and his brother which is dated 9-7-1993 i.e. after marriage. It is the case of the petitioner that sale consideration for Ext.P2 assignment deed was the amount paid by her father to the respondent. PW3, the Secretary of the Juma ath has deposed with respect to the sale of 57 cents of property by the father of the petitioner and that the same was for the purpose of raising the amount for giving the same to the respondent. It was also found that no evidence as such has been produced as to the salary obtained by the respondent at Kuwait. It is on the basis of the above evidence, that was found to be reliable that

the court found that the petitioner is entitled for the return of the amount and for maintenance during the period of iddat and towards reasonable and fair provision and maintenance as mandated by the statute. A sum of Rs.2000/- per month was taken as the reasonable amount that the respondent could pay considering the fact that he is employed abroad. A period of five years was taken as the period for which future maintenance was calculated at the above rate and the same worked out at Rs.1,20,000/-. The court below also decreed Rs.6,000/- as maintenance during the period of iddat and Rs.75,000/- the amount paid at the time of marriage. The rest of the claims were not allowed in the absence of any objective evidence in the matter. I find that there is nothing erroneous or arbitrary in the appreciation of evidence and adjudication of the matter by the courts below. Hence, the Crl.M.C.is dismissed.

K.R.UDAYABHANU, JUDGE

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